

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

OCT 20 1994

In the Matter of)

)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

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**REPLY COMMENTS OF
EAST OTTER TAIL TELEPHONE COMPANY**

East Otter Tail Telephone Company ("East Otter Tail"), by its attorneys, hereby submits its Reply Comments in support of the captioned Notice of Proposed Rule Making, released August 11, 1994.

East Otter Tail joins in the near unanimous support obtained in the first round of Comments for the elimination of the Commission's wireline prohibition. In addition to East Otter Tail, twenty-five commenters addressed the wireline prohibition. Of these, a full twenty-four supported wireline entry into the field of SMR. Even Nextel, the nation's largest SMR provider, submitted comments supporting the elimination of this restriction. The only dissenter in the group was SMR WON, an organization of certain SMR providers. However, SMR WON's arguments are unsuccessful in providing grounds for retaining the wireline prohibition.

For one, SMR WON claims that lifting the wireline prohibition, even as to small telephone companies, will result in competitive harm to traditional SMR operators.¹ This is hardly the case, as small telephone companies often serve rural areas where SMR service

¹ SMR WON Comments, p. 15.

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is non-existent or where only one SMR operator provides service. Permitting wirelines to step in and fill this void would enhance, not harm, competition. Indeed, the term "competition" is wholly inapplicable to areas where only one operator (and often no operators) provides SMR service.

SMR WON additionally claims that the SMR industry is not yet well-enough established to permit wireline entry and is unable to effectively compete with wirelines.² Yet, it defeats logic to argue that an industry that is fully twenty years old is not yet mature. Moreover, early in its comments, SMR WON discusses the current "competitiveness and innovation" of individual SMR operators industry-wide.³ These references directly contradict SMR WON's subsequent assertions about the immaturity of the SMR industry and its inability to effectively compete. SMR is a mature industry, and it is moreover an industry especially ripe for new players, given the current dominance and continuing growth of Nextel.

The Commission's rationale for the wireline restriction has been eliminated by Congressional mandate for regulatory symmetry among similar mobile services. SMR WON's claim that the dual regulatory structure of the 1970s was a beneficial arrangement for small businesses⁴ is simply irrelevant, in light of the fact that Congress has effectively eliminated this regulatory structure in

² SMR WON Comments, pp. 13-17

³ SMR WON Comments, pp. 13-17.

⁴ SMR WON Comments, p. 7.

passing the Omnibus Budget Reconciliation Act of 1993. The Commission has implemented this Congressional mandate to require that interconnected SMR systems be treated as common carrier service, and regulated with cellular and PCS.⁵ As such, regulatory parity requires that, just as there are no restrictions against wireline provision of cellular service, there should be similarly be no restrictions against wireline provision of SMR services.

Finally, SMR WON's assertions that interconnection safeguards are inadequate to prevent telco discrimination are unfounded, for SMR WON fails to support its allegations with actual cases or complaints citing telco discrimination against competitors seeking cellular interconnection.⁶ Indeed, the exemplary record of telcos fairly furnishing nondiscriminatory interconnection to competitors in the cellular industry indicates that telcos will similarly not engage in discriminatory interconnection practices with respect to the SMR industry.

For the foregoing reasons, East Otter Tail respectfully requests that the Commission immediately eliminate the prohibition

⁵ 47 C.F.R. § 20.9(a); Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1451, 1468, 1510 (1994).

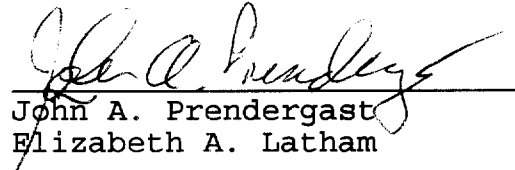
⁶ SMR WON Comments, pp. 16-17.

against the provision of SMR service by wireline telephone companies.

Respectfully submitted,

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